the authority of *Blyth v. Denneth*[1] and *Keith Prowse & Co. v. National Telephone Company*[2] it does not. Accordingly the notice to quit had not been waived, and the tenancy had been determined as from the 14th day of August, 1946.

The provisions of the Federated Malay States Rent and Charged Land (Restriction) Enactment, 1940, are designed to protect tenants and sub-tenants only so long as they fulfil their legal obligations to their landlords. Payment of rent, when due, is one of those obligations, and failure to do so takes away the protection of that Enactment from the defaulting tenant. Once the rent has been in arrears for more than fourteen days the landlord is entitled to issue a notice to quit without the permission of the Rent Assessment Board. Once that protection is lost the tenant cannot regain it by paying the arrears of rent due, and the landlord does not waive his rights of ejectment by accepting rent from the tenant up to the date of the expiration of the notice to quit.

To hold otherwise would place landlords in an impossible position, because tenants would be able to default time and time again and only pay the rent in arrears when landlords issued notices to quit. This would mean that landlords would be forced to issue notice after notice, and each such notice could be rendered useless by subsequent payment of the rent in arrears. Since the provisions of the Rent and Charged Land (Restriction) Enactment, 1940, interfere with private rights, they must be construed strictly, and not in such a way that tenants would be able to default continually in payment of rent when due, and only pay such rent when ejectment proceedings had been commenced by the issue of a notice to quit.

Accordingly this appeal must be allowed. As regards costs, the first plaintiff-appellant stated on the hearing of the appeal that, although he is an Advocate and Solicitor, he had appeared in person on the appeal because he wished to save the defendant-respondent costs in the event of the appeal succeeding, as this is in the nature of a test case. Hence the first plaintiff-appellant is entitled to his out-of-pocket costs only.

The case is remitted back to the District Court at Kuala Lumpur and should be proceeded with on the footing that no permission of the Rent Assessment Broad is necessary as a prerequisite to the institution and determination of the suit.

Order Accordingly.

R. v. LOK KEAN CHUAN AND 4 OTHERS.

[Orig. Crim. Juris. (Carey, J.) November 15, 1946]

Public Order and Safety Proclamation, Section 3 (1)—Carrying arms—Factors to be taken into consideration in assessing sentence—Trial by jury.

In this case the five accused were tried before a judge and jury and were found guilty of carrying arms contrary to Section 3(1) of the Public Order and Safety Proclamation. In passing sentence, the learned Judge held that he could sentence the accused merely in respect of the offence of carrying arms of which they have been found guilty, without proceeding to find further facts as to the use of arms or the existence or non-existence of a common intention to use arms.

Case referred to :—

(1) *Choh Wai Sung v. Public Prosecutor* (1946) 12 M.L.J. 119.

CRIMINAL TRIAL.

Carey, J. :—The jury by an unanimous verdict has found the first three accused guilty of carrying arms contrary to section 3 (1) of the Public Order and Safety Proclamation and the fourth and fifth accused guilty of the same offence by a majority of five to two, in which finding I concurred.

Having regard to the judgment of the Court of Appeal in the recent case of *Choi Wai Sung vs. Public Prosecutor*[1] by which I should be guided, it seems to me that the peculiar situation arises, in that the jury, the judges of fact, are merely concerned with the bare finding of fact as to the carrying of arms whereas I, as judge, am obliged to arrive at more important findings of fact in respect of the same charge in order to decide what is the proper sentence to impose in respect of each accused.

In the case I have cited certain guiding principles to be observed in assessing the quantum of punishment are laid down and these involve findings of fact by the judge as to whether or not firearms were used or an attempt to use them was made and, where more than one person is charged, findings as to whether or not there was a common intention to use arms.

Where the trial of an offence for which the death penalty may be imposed is conducted before a judge, with a jury or with assessors, it seems to me quite contrary to the principles of trial by jury that the findings of facts upon which the life of the accused may depend should be witheld from the consideration of the jury or assessors.

The carrying of arms and using thereof or attempted use thereof, either in the committing of a crime or in the attempted evasion of arrest ought to constitute an offence distinct from the offence of merely carrying arms and ought to form a distinct charge upon which the verdict of the jury or assessors should be obtained.

With all due deference to the Court of Appeal, whose *dictum* in the case cited is only *obiter* and before which the points I mention were not raised, I feel obliged to sentence the accused merely in respect of the offence of carrying arms of which they have been found guilty, without proceeding to find further facts as to the use of arms or the existence or non-existence of a common intention to use arms.

I sentence each accused to a term of ten years' rigorous imprisonment in respect of the offence of carrying arms contrary to section 3 (1) of the Public Order and Safety Proclamation.

The sentence of the first accused will commence to run when he has served one year of his previous sentences.

Sentences Passed Accordingly.

STRAITS SETTLEMENTS REPORTS.

MOHAMED ABDUL CADER v. FREDERICK SMITH.

[Orig. Civil Juris. (Worley, J.) December 12, 1941]

Civil Law Ordinance, Section 7 as amended by the Civil Law (Amendment) Ordinance 1940 — Negligence — Damages for loss of expectation of life — Factors to be taken into consideration in assessing quantum of damages to be awarded.

This was a claim for damages for loss of expectation of life and for funeral expenses brought by the administrator of the estate of one Nee Aya Abdul Karim (deceased) under the provisions of Section 7 of the Civil Law Ordinance as amended by the Civil Law (Amendment) Ordinance 1940. It appeared that the deceased was a Tamil Mohamedan aged 26 and that he owned a small shop at 71-6 Woodlands Road, a rural district of Singapore, where he carried on business in piece-goods, provisions and general merchandise. On the 13th of October 1940 when cycling in Woodlands Road he was knocked down by the defendant's car and was severely injured. When the defendant found him in the roadside ditch immediately afterwards he was either dead or unconscious, and if the latter, he died shortly after without regaining consciousness. The defendant admitted negligence and liability in damages and the only question for decision was as to the quantum of the damages.

Held, applying the principles laid down in the English case of **Benham v. Gambling,** that $1,500/- was a proper sum to award in this case.

Cases referred to:—

(1) *Flint v. Lovell* (1935) 1 K.B. 354.

(2) *Rose v. Ford* (1937) A.C. 826.

(3) *Benham v. Gambling* (1941) A.C. 162.

(4) *Yee Kong v. Teh Seng* (1941) 10 M.L.J. 58.

ACTION FOR DAMAGES.

K. Tangamani for the plaintiff.

C. C. Tan for the defendant.

Worley, J.: —This is a claim for damages brought by the administrator of the estate of a deceased person under the provisions of section 7 of the Civil Law Ordinance as amended by the Civil Law (Amendment) Ordinance 1940. Damages are claimed for the injury which has come to be known as loss of expectation of life. The deceased person left no dependants so there is no claim under section 8 of the Ordinance. There is a claim for $150 for funeral expenses.

Section 7 of the Civil Law Ordinance as amended by Ordinance No. 30 of 1940 was clearly intended to reproduce the statute law of England as enacted in section 1 of the Law Reform (Miscellaneous Provisions) Act, 1934; section 7 (1) and (2) (c) of the Ordinance correspond to section 1 (1) and (2) (c) of the Act. Decisions on these provisions of the English Act will therefore furnish a guide to the interpretation of the Ordinance, and I have also been referred to a decision of Howes J. on a corresponding section in the Civil Law Enactment of the Federated Malay States.

In the present case, counsel for the defendant accepted as law in the Colony the principles laid down by the Court of Appeal and the House of Lords in the well known cases of *Flint v. Lovell*[1] and *Rose v. Ford*[2]. The former case decided that in a claim for damages by a living person who has met with an accident through the negligence of the defendant, the Court in assessing damages is entitled to take into consideration as one of the elements of damage the